

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:97cr333**

LEROY JOSEPH KELLY,)	
)	
Petitioner,)	
)	
Vs.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

THIS MATTER is before the court on “Petitioner’s Application for Certificate of Appealability” (#76) and petitioner’s “Application for Certificate of Appealability” (#77). On September 6, 2011, this court entered an Order finding that petitioner’s “Motion to Modify Sentence Under 18 U.S.C. § 3582(1)(B) [§ 3582(b)(1)] ” (#74) was a successive Motion to Vacate, Set Aside, Or Modify Sentence under 28, United States Code, Section 2255. The court then dismissed that motion without prejudice based on a lack of jurisdiction as petitioner failed to receive prior authorization from the Court of Appeals for the Fourth Circuit before filing such successive or second motion in this court.

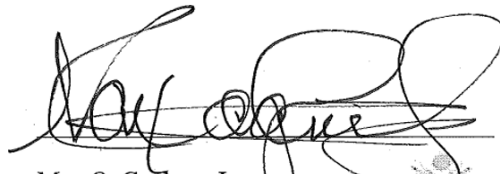
After dismissing the action, the court declined issuance of a certificate of appealability as petitioner had not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller -El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484–85 (2000) (in order to satisfy § 2253(c) when court denies relief on procedural grounds, a petitioner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right).

In neither motion seeking reconsideration of that determination has petitioner made any showing that reasonable jurists would find this court's assessment debatable or wrong. Thus, there is no basis for granting a certificate of appealability.

ORDER

IT IS, THEREFORE, ORDERED that “Petitioner’s Application for Certificate of Appealability” (#76) and petitioner’s “Application for Certificate of Appealability” (#77) are **DENIED**.

Signed: March 26, 2012



Max O. Cogburn Jr.
United States District Judge